

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

POTTSTOWN MEMORIAL MEDICAL CENTER,	:	
	:	Case No. 04-RC-181689
	:	
Employer	:	
	:	
and	:	
PENNSYLVANIA ASSOCIATION OF STAFF NURSES	:	
AND ALLIED PROFESSIONALS,	:	
	:	
Petitioner-Union	:	

PETITIONER’S OPPOSITION TO EMPLOYER’S REQUEST FOR REVIEW

The Pennsylvania Association of Staff Nurses and Allied Professionals, (“PASNAP” or “Union”), Petitioner in the above-referenced matter, pursuant to Section 102.67(f) of the Board’s Rules and Regulations files this opposition to the Request for Review (“Request”) filed by the Employer, Pottstown Memorial Medical Center (“Hospital”) on October 3, 2016, seeking review of the September 19, 2016 Decision on Objections and Certification of Representative issued by Acting Regional Director (“RD”) Harold Maier in the above matter.

PROCEDURAL HISTORY

The Petition in this matter (attached as Exhibit A to the Request) was filed on August 8, 2016, seeking a unit of full-time, part-time and *per diem* registered nurses employed by the

Hospital which is located in Pottstown, Pennsylvania. The bargaining unit sought thus conformed to Section 103.30(a)(1) of the Board's Rules and Regulations.

In accordance with Section 102.63(b)(1), on August 23, 2016, the Hospital filed its Statement of Position in which it raised, *inter alia*, the "[u]nlawfulness of Board's R-case rules." (A true and correct copy of the Hospital's August 23, 2016 Statement of Position is attached hereto and marked as Exhibit 1). Notwithstanding this objection, on August 24, 2016, the Hospital entered into a Stipulated Election Agreement ("SEA") [Request, Exhibit B] and, pursuant thereto an election was conducted at the Hospital on September 7, 2016. Of those voting, 189 voted in favor of PASNAP and 129 opposed representation. (Request, Exhibit C).

On September 14, 2016, the Hospital filed, pursuant to Section 102.69(a), Objections to the Election ("Objections") (Request, Exhibit D), challenging the legality of the Board's Representation Rules ("Rules") that became effective April 15, 2015. On September 19, 2016, pursuant to Section 102.69(c)(1)(i) of the Rules, the Regional Director ("RD") issued a Decision overruling the Objections ("Decision") (Request, Exhibit E) because (a) the Employer had failed to provide a written offer of proof; and (b) the arguments advanced by the Hospital challenging the Rules were without legal merit.

ARGUMENT

The Employer has contended that its Objections were not procedurally deficient because it was purely advancing a legal challenge to the Rules. The Union agrees with the RD's finding that the Employer's failure to attach a written offer of proof rendered the Hospital's objections

procedurally deficient.¹ In addition, and importantly, the day after it submitted its Statement of Position, the Employer entered into a Stipulated Election Agreement that controlled the terms and conduct of this election. The Employer is therefore “estopped from attacking the propriety of an election to which it has expressly agreed.” See *Manorcare of Kingston PA, LLC*, 361 NLRB No. 17, slip op. at 1 fn. 1 (2014), enfd. in relevant part 823 F.3d 81 (D.C. Cir. 2016) (rejecting employer’s argument that Regional Director lacked authority to conduct election when employer agreed to a stipulated election agreement setting terms of that election); see also *Avenue Care and Rehabilitation Center*, 361 NLRB No. 151, slip op. at 1 fn. 1 (2014).

Moreover, the Request raises absolutely no legal issues that warrant further consideration. All three Objections arise out of the Board’s adoption of the Final Rules in April, 2015. Quite frankly, extensive analysis is hardly warranted. The Employer conveniently ignores the fact that legal challenges to these rules, virtually identical to the one offered by the Employer in this matter, have been rejected by the courts. *Associated Builders & Contractors of Texas, Inc.*, 826 F.3d 215 (5th Cir. 2016); *Chamber of Commerce of the United States v. NLRB*, 118 F.Supp.2d 171 (D.D.C. 2015).

Perhaps more important, the Board itself has rejected the arguments made by the Employer in the Request. *Pulau Corporation*, 363 NLRB No. 8 (2015). See also, *UPS Ground Freight*. Case 04-RC-165805, 2016 NLRB 370026 (2016); *Meadowbrook Meat Company, Inc.*, Case 31-RC-174374, 2016 WL 2941103 (2016); *Durham School Services, LLP*, Case 32-RC-150090, 2015 WL 6735642 (2015).

¹ Certainly the Employer could have offered some evidence as to its purported concerns about the privacy of its employees, given its argument that the provision of personal phone numbers and email addresses somehow created a problem, but it declined to do so.

CONCLUSION

Based on the arguments advanced above, the Request for Review should be denied.

RESPECTFULLY SUBMITTED

MARKOWITZ & RICHMAN

By s/ Jonathan Walters

Jonathan Walters, Esquire
123 S. Broad Street, Suite 2020
Philadelphia, PA 19109
Telephone: (215) 875-3121
Telefax: (215) 790-0668
Email: jwalters@markowitzandrichman.com

Counsel for PASNAP

Dated: 7 October 2016